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March 10, 2008

**Via E-Mail: [driddle@waterboards.ca.gov](mailto:driddle@waterboards.ca.gov)**  
**And U.S. Mail**

Ms. Diane Riddle  
Staff Environmental Scientist  
Hearings and Special Programs Section  
Division of Water Rights  
P. O. Box 2000  
Sacramento, California 95812-2000

**Re: *March 19, 2008 Workshop to Receive Information on Development of a Strategic Workplan for the San Francisco Bay/Sacramento-San Joaquin Delta***

Dear Ms. Riddle:

Through this letter, the San Luis & Delta-Mendota Water Authority (Authority) and Westlands Water District (Westlands) provide written comments for the above-referenced workshop. During the February 5, 2008 meeting of the State Water Resource Control Board (State Water Board), the Authority and Westlands expressed concern with the lack of stakeholder involvement in the development of the Strategic Workplan. Since that meeting, the State Board staff, as well as the staff for the Central Valley Regional Water Quality Control Board, reached out to the stakeholders. The Authority and Westlands complement them for their effort.

At the February 5, 2008 State Water Board meeting, the Authority and Westlands also expressed concern with what appeared to be a very narrow focus of the State Water Board's role in the Strategic Workplan. The State Water Board's role in the Strategic Workplan appeared limited to only a few actions (four potential actions) to be implemented through limited authority (water rights authority). The State Water Board

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staff clearly heard the concerns of the Authority and Westlands. The notice for the March 19 workshop establishes the appropriate context for the discussion and development of a comprehensive Strategic Workplan. The framework established by the notice for the March 19 workshop is consistent with State Water Board Resolution No. 2007-0079.

### **Specific Comments**

1. Consideration of the Delta Vision, CALFED, and the Bay Delta Conservation Planning Process

It is critical for the State Water Board to exercise its authority in a manner that complements and, if appropriate, assists the Delta Vision Blue Ribbon Task Force (Delta Vision), CALFED program, and the Bay Delta Conservation Plan (BDCP) process. To further those goals, the State Water Board and its staff should continue to participate in the Delta Vision and BDCP processes and attend their meetings. Continued participation and attendance will allow the State Water Board and its staff to interject important guidance on water rights and water quality issues, help the State Water Board appreciate the potential implications of actions it is contemplating on those processes, and prepare the State Water Board for the potential issues that would be presented to it at the completion of those processes.

2. Consideration of a Proceeding to Protect Public Trust Resources and Evaluate Method of Diversions

The notice for the March 19, 2008 workshop continues to propose that the Strategic Workplan should evaluate and further define a proceeding to protect public trust resources and to consider the reasonableness of the method of diversion by the Central Valley Project (CVP) and the State Water Project (SWP). The Authority and Westlands cannot disagree more. Governor Arnold Schwarzenegger in a recent letter (a copy of which is attached) expressed the importance of the Delta Vision and BDCP. They clearly provide the most promising solution to the complex problems facing the Bay-Delta. If the State Water Board were to conduct such a proceeding, it would be broad and complicated in nature. As a result, the participants in the Delta Vision and BDCP would likely be required to reprioritize their efforts. They would likely have to redirect both staff and financial resources from the Delta Vision and BDCP to the proceeding. Given the promise of the Delta Vision and the BDCP and limited resources

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at the State Water Board, evaluation and further definition of a public trust proceeding seems unwise.

### 3. Assessing the Pelagic Organism Decline

The Authority and Westlands support the additional analysis of the Pelagic Organism Decline (POD) by the State Water Board and Regional Water Quality Control Boards. However, attachment B to the Notice of Workshop explains: "The Water Boards will assess the POD synthesis report, the revised delta smelt biological opinion, and other information regarding the POD." This list of documents to be assessed is misleading. The "revised delta smelt biological opinion", presumably the biological opinion expected from the United States Fish and Wildlife Service on the Operations Criteria and Plan for the Central Valley Project, will only address operations of the Central Valley Project and State Water Project. It will not consider the majority of factors that could be contributing to the POD, including contaminants and invasive species. Thus, the Strategic Workplan should simply indicate: "The Water Boards will assess the Pelagic Organism Decline."

Attachment B to the Notice of Workshop also states: "As part of the strategic workplan, the Water Boards staff will propose for the State Water Board's consideration a timeline to review and amend, as appropriate, the Bay-Delta Plan to provide additional protection to pelagic organisms and other species and, following notice and opportunity for hearing, water rights permit or license requirements." The focus on implementation of any revised or new protections through changes in water rights is premature. As noted above, there are many theories for the cause of the POD, and many more theories as to the factors that stress pelagic organisms. It is very likely that to provide additional protection to pelagic organisms and other species, the State Water Board and the Regional Water Quality Control Boards will have to exercise their water quality authorities, or recommend action be taken by third parties. The Strategic Workplan should reflect the potential need for action by many entities through many authorities to resolve the POD.

### 4. Southern Delta Salinity Objectives

The State Water Board should take action to enforce the southern Delta salinity objectives and take other corrective actions. The Strategic Workplan, however, should make clear that when the State Water Board takes the enforcement or corrective action, it does so consistent with prior orders/actions by the State Water Board, including the

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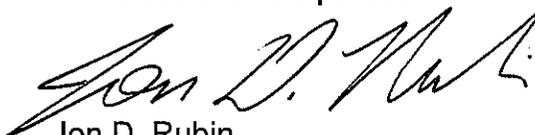
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2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

The Authority and Westlands look forward to the March 19 workshop, and anticipate providing additional comments at that time.

Very truly yours,

DIEPENBROCK HARRISON  
A Professional Corporation



Jon D. Rubin  
Attorneys for the San Luis & Delta-Mendota  
Water Authority and Westland Water District

JDR/jvo

Attachment

Cc: Daniel G. Nelson  
Thomas W. Birmingham  
Ara Azhderian  
Jason Peltier

**ATTACHMENT**



GOVERNOR ARNOLD SCHWARZENEGGER

February 28, 2008

The Honorable Don Perata  
President pro Tempore  
California State Senate  
State Capitol  
Room 205  
Sacramento, California 95814

The Honorable Darrell Steinberg  
California State Senate  
State Capitol  
Room 4035  
Sacramento, California 95814

The Honorable Mike Machado  
California State Senate  
State Capitol  
Room 5066  
Sacramento, California 95814

Dear Don, Mike and Darrell,

My administration has been working on solutions for addressing California's water supply and the environmental crisis in the Sacramento-San Joaquin Delta for more than two years. As you all have acknowledged during our negotiations on a comprehensive water infrastructure package over the last year, the heart of California's vital water supply system is in jeopardy of collapse without both immediate action and long term solutions to restore the ecosystem and protect water supplies.

I created the bipartisan Delta Vision Blue Ribbon Task Force by administrative action in 2006. The Task Force has issued its Vision and will develop a Strategic Plan to implement the Vision by the end of this year. In its recommendations, the Task Force identified a series of near-term actions that should be taken to protect the estuary, including studying the options for improving water transfer in the Delta. Far from acting unilaterally, my administration has been transparent in working with stakeholders and legislators on identifying both administrative and legislative actions that will be necessary to address the recommendations of the Task Force. As part of that effort, I will continue to negotiate in good faith with legislators on a comprehensive water infrastructure package.

To clarify the administrative actions we are considering as part of a comprehensive solution in the Delta, let me outline some of the key elements under development:



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1. **A plan to achieve a 20 percent reduction in per capita water use statewide by 2020.** Conservation is one of the key ways to provide water for Californians and protect and improve the Delta ecosystem. A number of efforts are already underway to expand conservation programs, but I plan to direct state agencies to develop this more aggressive plan and implement it to the extent permitted by current law. I would welcome legislation to incorporate this goal into statute.

2. **Protection of floodplain in the Delta.** The Department of Water Resources (DWR) and other appropriate state agencies will expedite the evaluation and protection of critical floodplains. This action protects people and property, the existing water export system and the Delta ecosystem.

- **Policy guidance on Delta land use.** The Blue Ribbon Task Force made it clear that changing land use patterns may limit our ability to address critical issues with the existing water export system and the Delta ecosystem. Accordingly, I will ask the Delta Protection Commission to update their Land Use and Resource Management Plan and direct the Governor's Office of Planning & Research and the State Architect to develop model Delta land use guidelines for distribution to local governments.
- **Levee protection and standards.** DWR is actively involved in efforts to improve our flood protection and levee systems and, as part of this effort, should establish recommended standards for Delta levees.

3. **Multi-agency Delta disaster planning.** DWR, in coordination with the Office of Emergency Services, and other appropriate state agencies will develop and implement an emergency response plan and conduct a multi-agency disaster planning exercise in the Delta.

- **Contract for emergency response equipment and services.** I will authorize DWR to continue its efforts to obtain equipment and services including barge services, sheet piling and other flood fighting materials to respond to disasters in the Delta. In addition to my previous orders, we must expedite the placement of materials and supplies in and near the Delta, to improve our emergency response capabilities.

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**4. Expedite interim Delta actions.** The Resources Agency, DWR, Department of Fish and Game and the State Water Resources Control Board have already begun efforts to help protect and restore Delta habitat and help water users cope with supply interruptions.

I will direct the Resources Agency to expedite the completion of the Bay Delta Conservation Plan (BDCP), including the environmental review and permitting activities. Ongoing Delta actions, in conjunction with these efforts, will provide a foundation to help conserve at-risk species and improve water supply reliability.

**5. Water quality.** While additional storage and improved conveyance can allow greater control of water flows that improve drinking water quality, more must be done. I will direct the State Water Resources Control Board to develop and implement a comprehensive program in the Delta to protect water quality.

**6. Improvements to Delta water conveyance.** DWR and other appropriate state agencies will soon begin the public process to study the alternatives available for improving the Delta water conveyance system. As part of this study, DWR must coordinate with BDCP efforts to recover at-risk species. DWR must also incorporate the issues of water supply reliability; seismic and flood durability; ecosystem health and resilience; water quality; and projected schedule, cost and funding in their options review, as suggested by the Task Force.

The Task Force recommended that we study a "dual conveyance facility" as a starting point. However I believe we must look at a full range of options for improving conveyance in the Delta.

Accordingly, I intend to direct DWR to proceed with the NEPA/CEQA analysis on at least four alternatives for Delta conveyance. They shall consider the following:

- The possibility of no new Delta conveyance facility;
- The possibility of a dual conveyance facility, as suggested by the Task Force;
- The possibility of an isolated facility;
- The possibility of substantial improvements and protections of the existing water export system, most often referred to as 'armoring the Delta' or a "through-Delta" solution.

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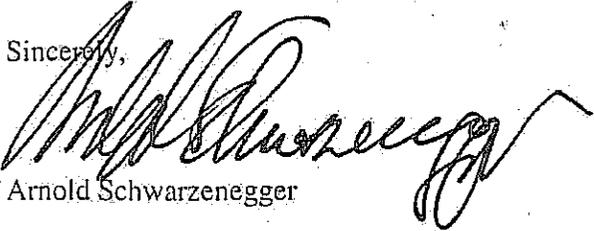
7. **Water storage.** DWR will complete the feasibility studies for the CALFED storage projects including Temperance Flat, Sites Reservoir, and the Los Vaqueros expansion. Each of these projects, depending on how they are built and operated, can provide substantial public benefits. Unlike in the past, when local entities built storage facilities for their own benefit and with little state investment, the current deteriorating condition of the Delta and the statewide water system demand public investment in exchange for the public benefit the entire state will realize.

In addition, I will direct DWR to expedite funding for groundwater storage projects throughout the state that will improve water supply reliability.

Please know that I will continue to work with the Legislature and all stakeholders to develop a comprehensive solution to the crisis in the Delta, and I will act on administrative measures in a transparent manner at the appropriate time.

California's history is filled with innovators and problem solvers. In 2006, with Democrats and Republicans working together for a common cause, we added to that legacy by building up our infrastructure. We showed leadership, not for the benefit of our own ambitions, but for the future of the state. That's something that Californians weren't used to, and they responded forcefully, approving all of the bonds. It's time for us to put the state first and add another chapter to the history books. It's time to secure a safe, clean and reliable water supply for the next generation of Californians. We have a great opportunity, and the people are counting on us. Let's not let it pass.

Sincerely,



Arnold Schwarzenegger